

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

JOHNNY A. NECESSARY,

*Petitioner,*

v.

NATHANIEL QUARTERMAN,

*Respondent.*

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CIVIL ACTION No. H-07-0954

**ORDER ON DISMISSAL**

Petitioner Johnny A. Necessary, a state inmate proceeding *pro se* and *in forma pauperis*, filed this habeas proceeding under 28 U.S.C. § 2254 challenging his prison disciplinary conviction. The Court ordered respondent to file an answer or dispositive motion, and ordered petitioner to file a response to a motion for summary judgment within thirty days after service of the motion. (Docket Entry No. 4.) On June 15, 2007, respondent filed a motion for summary judgment, and served a copy on petitioner. (Docket Entry No. 6.) On July 16, 2007, petitioner requested a thirty-day extension to respond to the motion for summary judgment. (Docket Entry No. 8.) The Court granted the request and ordered the response filed by August 13, 2007. To-date, and despite expiration of a reasonable period of time, petitioner has failed to file, or request additional time to file, a response to the motion for summary judgment.

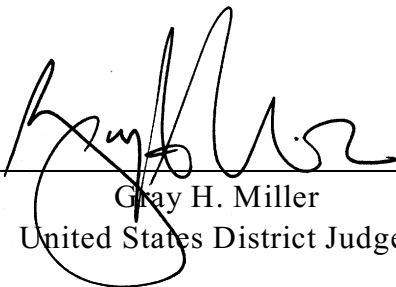
The Court finds that petitioner has failed to comply with the Court's order to respond to the motion for summary judgment. The Court further finds that petitioner's failure to

respond to the motion reflects his lack of due diligence in prosecuting his case. *See Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (affirming dismissal for want of prosecution based on inmate's failure to respond to a summary judgment motion as ordered by the district court).

Accordingly, this case is DISMISSED WITHOUT PREJUDICE for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Any and all pending motions are DENIED AS MOOT.

The Clerk will provide a copy of this order to the parties.

Signed at Houston, Texas on August 22, 2007.



Gray H. Miller  
United States District Judge